



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,110	08/16/2006	James Hamilton Erskine	8830-381(220706)	9529

7590 12/03/2009
Gregory J. Lavorgna, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-7595

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
----------	--------------

3641

MAIL DATE	DELIVERY MODE
-----------	---------------

12/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,110	Applicant(s) ERSKINE, JAMES HAMILTON	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-30 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3641

1. This Office action is in response to the amendments and arguments as filed on 9/21/2009. Applicant's election without traverse of the group III invention, drawn to an impact resistant system containing first and second layers in the reply filed on 5/18/2009 is acknowledged.

Claims 26-30 and 40 read on the elected invention and an action on these claims follows.

Claims 1-25 and 31-39 are withdrawn from consideration as being directed to non-elected inventions.

2. The drawings corrections and replacement drawings as filed on 9/21/2009 have been approved.

3. Claims 26-30 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The term "high tensile strength" in claim 26 is a relative term which renders the claim indefinite. The term "high" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Note that what is considered "high" depends upon the context usage. What is considered "high" relative to one tensile strength would be low relative to another tensile strength.

5. Applicant's arguments with regard to the term "high tensile strength" are not convincing. The argument that materials of this tensile strength would be readily used by one of ordinary skill in the explosive arts does not serve to qualify what levels of strengths would or would not meet this claim limitation. It also ignores the fact that high tensile strength materials are used in

Art Unit: 3641

many applications other than the explosive arts and what levels of strength are required in either of the above contexts is indefinite for the reasons given above (see paragraphs 4 and 5).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 26-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Telford et al. (185) in view of Rubenstein (890).

8. Telford et al. (185) disclose a wall-reinforcement assembly comprising:

- | | |
|-------------------------------------------------------------------------------|-------------------------------------------|
| a) a first wall layer; | block assembly;
10, 16, 17, 18 |
| b) a flexible layer of reinforcement pieces secured to the floor and ceiling; | 13, 13a; fig. 5;
paras. [0058], [0059] |
| c) a floor and ceiling; | 11, 19, para. [0061] |
| d) reinforcement layer is secured to a rigid part of the floor; | 13, 13a, 11; fig. 5 |
| e) a third layer that is an internal finish; and | 13 (inner layer) |
| f) a window opening. | 25 |

9. Telford et al. (185) apply as recited above. However, undisclosed is a first wall layer or building block layer wherein the building blocks are composed of a glass fiber reinforced plastic. Rubenstein (890) teaches a glass fiber reinforced plastic (see col. 1, line 59 to col. 4, line 38) building block. Applicant is substituting one type of building block material for another in an analogous art setting with expected or predictable results (see KSR Int'l Co. v. Teleflex, Inc., 550

Art Unit: 3641

U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Rubenstein to the Telford et al. assembly and have an assembly with a different type of building block.

10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Telford et al. (185) in view of Rubenstein (890) as applied to claims 26-28 and 30 above, and further in view of Morton (260).

11. Telford et al. (185) and Rubenstein (890) apply as previously recited. However, undisclosed is a reinforcement layer that is constructed as a plurality of strips. Morton (260) teaches a reinforcement layer that is constructed as a plurality of strips (10, 10a, 10b). Applicant is substituting one type of reinforcement layer structural configuration for another in an analogous art setting with expected or predictable results (see KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Morton to the Telford et al. in view of Rubenstein structural assembly.

12. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Telford et al. (185) in view of Rubenstein (890) as applied to claims 26-28 and 30 above, and further in view of Wang et al. (046).

13. Telford et al. (185) and Rubenstein (890) apply as previously recited. However, undisclosed is a transparent panel with laterally extending flexible reinforcement pieces. Wang et al. (046) teach a transparent panel with laterally extending flexible reinforcement pieces (30, 35). Applicant is selecting and assembling analogous art structure wherein the assembled structure performs in the same way after assembly as prior thereto with expected or predictable results

Art Unit: 3641

(see *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Wang et al. to the Telford et al. in view of Rubenstein structural assembly and have a wall structure with an included flexibly mounted window assembly.

14. Applicant's arguments with respect to claims 26-30 and 40 have been considered but are moot in view of the new ground(s) of rejection.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

/Stephen M. Johnson/
Primary Examiner, Art Unit 3641

SMJ
December 1, 2009